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DECISIONS OF THE GENERAL TERM OF THE SUPREME COURT, IN THIRD
JUDICIAL DISTRICT, SEPTEMBER, 1859.

Standing in a column of decisions just announced, undistinguished from ordinary adjudications by this tribunal, are certain ones which, nevertheless, are remarkable enough to entitle them to special notice. They are stated thus :

“In the Matter of the Application of the New York Central Railroad Company to vacate the award made between said Company and GEORGE H. CLARK. Order of Special Term, denying motion to vacate, affirmed.”

“In the Matter of the Application of GEORGE H. CLARK to confirm the award between said Clark and the New York Central Railroad Company. Order of Special Term, confirming award, affirmed.”

“GEORGE H. CLARK *agst.* THE NEW YORK CENTRAL RAILROAD COMPANY. Judgment entered on award of arbitrators, affirmed.”

It is always agreeable to contemplate Courts of Law interposing to protect one individual against wrong and injury

attempted by another, but the feeling is raised to admiration when such tribunals use the power confided to them to save private worth from oppression and injustice at the hands of associated wealth and power. To rouse the gratitude of the public, as well as its applause, because of these heroic decisions, and also to admonish such Corporations as are accustomed to have money not to attempt to withhold it from private persons notoriously honest and greedy, a brief history of the attempt at fraud in the cases in question, and of its signal defeat by the Judiciary, is appended. Stockholders in the corporation implicated are not expected to read it.

In January, 1853, Elisha Morse, of Waterford, Henry Patrick, of Rome, and one Merrit Potter, purchased from Messrs. Huntington, of Rome, a lot of woodland lying on both sides of the Rome and Watertown Railroad, some three miles out of Rome; from which lot they cut about 50,000 cubic feet of lumber, between December, 1853, and March, 1854.

In December, 1854, they sold the land to George H. Clark, of *Schenectady*, but Henry Patrick, after the sale to Clark, cut and removed about 115,000 feet of hewn and round timber. One-third of the wood on the lot was thus cut into *timber*; and, as a matter of course, the wood so cut was the very best on the track.

The New York Central Railroad had been sagacious enough to choose its Superintendent from the very city which Mr. Clark had had the taste to select as his abiding place—*Schenectady*. A city honored by the venerable Dr. Nott for fifty years, it is submitted, will relieve any man from explaining how or why he came to live there. The Court seems to have appreciated properly the coincidence of locality. It is not surprising, therefore, that the Superintendent, oppressed by the duty of furnishing material for the consumption of the Railroad Company, finding he could do

more to that end there than elsewhere, did buy wood in Schenectady, and from a citizen of Schenectady.

In November, or December, 1854, the SUPERINTENDENT OF THE CENTRAL RAILROAD, MR. VIBBARD, made a contract with GEORGE H. CLARK, by virtue of which CLARK was to deliver to the COMPANY, from the lot in question, a quantity of wood, not to exceed 12,000 cords per year, at the price of \$3 per cord—the wood to be delivered upon the lot; to be suitable for the use of locomotive engines; sound; properly cut and split, and free from small limbs. It does not clearly appear by the testimony, whether this contract was made before or after the purchase of the wood lot by CLARK, which was in December, 1854. MR. VIBBARD'S memory of the time oscillates between November and December of that year, which is unfortunate, seeing pen and ink is not used in Schenectady, "between man and man," business of a certain sort being done there "upon honor." It is curiously illustrative of the primeval purity which subsists in that city, that a contract of this magnitude between two of its citizens needed not to be put in writing, and therefore was not. So beautiful an exhibition of mutual trust and confidence carries the mind of the profane back to the age of chivalry, but the pious will scarcely halt in their meditations this side of the Fall of Man. If MR. VIBBARD had bought wood in Paradise, his contract with ADAM would have been in this form. The Court seems to have been overwhelmed by the moral beauty of the transaction and marked its approbation of verbal contracts, made in Schenectady, by giving to this one a force quite beyond the power written contracts command. Can it be that the Valley of the Mohawk is the ancient Eden—is Union College itself but a sucker "from the tree planted in the midst thereof?"

It was obviously proper that for a "'pon honor" contract a 'pon honor "WOOD MEASURER" should be provided; and such an officer had been added to the staff of the Central Railroad Company. It was quite as proper that the city of

refuge for honest men, Schenectady, should be drawn upon to furnish an incumbent for the new office ; and furnish one she did, in Mr. PETER DORSCH. Saturated, soggy, dozy even with that solemn warning to all measurers, that, "such measure as ye mete to others shall be meted to you again," he so measured that, if the promise fail not, he is heir to the most stupendous of wood piles where the poorest will be rich at least in fuel. The contract and he seem made for each other. The PAYMASTER of the COMPANY appears not to have been a Schenectady man, and after the custom of the world outside of that city, required vouchers from CLARK for such payments as might be made to him. But for this innovation by the Paymaster, the business might have gone on indefinitely, as it was begun, without any indebtedness whatever to the art of writing. The WOOD MEASURER, whose salary is not stated and was perhaps the subject of another verbal contract, made in Schenectady, conformed to the requirements of the Paymaster, and set his hand to certificates, that he had inspected and measured $23,397 \frac{60}{100}$ cords of wood, delivered by CLARK to the CENTRAL RAILROAD COMPANY, between January 5, 1855, and December 20, of the same year ! Upon these certificates, endorsed by VIBBARD, CLARK received from the COMPANY the sum of \$69,504 78 !

CLARK's zeal to deliver wood to the COMPANY is most conspicuous, when what he did in that behalf is contrasted with what his contract required him to do. Upon his delivering 12,000 cords in a single year he might have betaken himself to the repose which so severe labor could scarcely fail to render grateful ; yet, it is abundantly established by the certificates of DORSCH, *re-endorsed* by VIBBARD himself, that in less than that term CLARK delivered to the COMPANY more than TWENTY-THREE THOUSAND CORDS ! And so, relatively, of the money. Thirty-six Thousand Dollars was all that this COMPANY could require CLARK to receive in any one year ; yet, it is undenied, that in less than that time it remorselessly thrust upon him nearly SEVENTY THOUSAND DOLLARS ! Inconvenient as it may

be to want money, it is also embarrassing to have it come upon one faster than it can be satisfactorily invested. Besides, the plethora of money, which must have very nearly driven the COMPANY to apoplexy about those days, ought to have been relieved without recourse to innocent parties like CLARK, for there is no evidence whatever that he was a STOCKHOLDER, or that he was in any way bound to suffer for the misfortunes of the COMPANY. Since the celebrated English case recorded by Hawkesworth, where the Churchwardens and Vestrymen certified that *they* wore a truss which cured a bad case of *hernia* in one of their parishioners, there has been no parallel to this of CLARK; and it will be difficult to frame a valid excuse for the COMPANY in the face of the fact that the Company's own counsel would have advised it, that notwithstanding the novelty of the thing, it had a legal right to compel the Stockholders to receive a dividend paid from their own money. CLARK should have been spared the taking of this money, not the STOCKHOLDERS.

It is painful to observe that all this diligence and complaisance on the part of Clark, did not save him from a notice by VIBBARD, in *October*, 1855, that the price of his wood must hereafter be reduced fifty cents per cord! CLARK's reply to this unreasonable requirement is admirable both for sense and spirit; quite worthy, indeed, of the best days of that Rome, which so far from possessing but one Stryker and he stricken, held not a male citizen who was not a striker:—"He would not take \$2 50 when he had a contract for \$3 per cord!" Seeing that outside of Schenectady the contract was void by the Statute of Frauds, it being an oral contract for the sale of growing trees, the moral courage exhibited by CLARK is quite imposing. VIBBARD must have thought so, for in the very next month, *November 7*, 1855, one of DORSCH's certificates was *endorsed* by VIBBARD, amounting to \$11,162 56, at \$2 85; and by the *20th December*, 1855, he was so chastened by remorse, that he *endorsed* another amounting to \$16,057 50, at \$3 per cord. There would be less to regret in this connection, if CLARK's feelings had escaped as did his pocket.

Let no one suppose that the measure of CLARK'S annoyances has been stated, but it will be noticed that at this point not a peg had protruded upon which a suit at law could be hung; a state of things which did not long continue. Hints, inuendos, and rumors ripened into positive allegations, and at length the parties to the contract, neither knowing how, and to their mutual grief, came to stand as antagonists—the Company claiming “that the measurements and certificates of measurements of said wood are not right, and that said CLARK has not delivered the quantity or quality of wood for which he has received certificates of measurement and payment, and that he now holds a certificate of measurement which should be delivered up to be destroyed or cancelled;” and also, “that the price paid for said wood to said CLARK is more than it should have been, and also that said CLARK owes said COMPANY for over-payments, on QUANTITY, QUALITY AND PRICE, as aforesaid, and justly should refund to said COMPANY:” and CLARK maintaining the converse of each proposition. The parties agreed finally to submit the controversy to arbitration.

There is too much reason to apprehend that, in the selection of arbitrators, CLARK was allowed little or no voice. Perhaps, as often happens, he was overawed by a wealthy and powerful corporation. Nothing but the result of the arbitration saves the PRESIDENT from severe condemnation for having named as arbitrators, gentlemen whose relations to the COMPANY were such as ought to have excluded them from such a position. Two of them were in the pay, certainly, and perhaps in the service of the COMPANY, and the THIRD was one of its own DIRECTORS! It is no answer to say, the three gentlemen named as arbitrators are, beyond all controversy, the most honest and intelligent at present concerned in the management of the Road—that will be cheerfully conceded—there were not probably five such men in all Sodom; but human prudence has established the rule that no man, liable to bias from interest or association,

shall be put in a position so perilous to integrity and harrowing to kind feeling. It is repeated, that MR. CORNING will owe his escape from censure for having named his own men as arbitrators, solely because MESSRS. DAVID HAMILTON, LIVINGSTON SPRAKER and BILLINGS P. LEARNED, have shown by their award, that if in any quarter hopes were indulged that they would incline toward the COMPANY they were connected with, all such hopes were vain and groundless.

The remarkable character of the award will perhaps appear as well from a disclosure of some of the very frivolous grounds upon which it was sought to be set aside, as from those upon which the arbitrators were solicited to make it. Besides, it will illustrate at the same time the action of both judicatories, and so shorten this narrative.

It was pretended that there was not land enough in CLARK'S lot to yield the quantity of wood alleged to have been delivered to the COMPANY.

The quantity of land bought of the Messrs. Huntington was 517 acres, of which there was occupied by the Railroad track, ...	13 $\frac{75}{100}$ acres.
Lands cut over by Morse, & a bleak place, ...	17 "
Land cut over 30 years ago, ...	40 "
Land uncut at the date of the award, ...	79 $\frac{28}{100}$ "
	150 $\frac{8}{100}$ "

Thus, the number of acres from which wood could have been cut for the Railroad was only 367 or thereabouts. From these 367 acres one-third was cut into timber, and was the best wood on the lot. PATRICK and DORSCH admit that they cut 165,000 feet of hewn and round timber from these 367 acres. Such men as E. B. ARMSTRONG, JOHN WEST, DAVID UTLEY, ELIZUR CLARK and JOSEPH KNIGHT, testified as to the quantity of wood upon the lot, and the highest estimate by them of the entire amount of it was 55 cords to the acre. ARMSTRONG, who gave the most full and intelligent

account of it, makes the quantity 40 cords to the acre, aside from the trees cut as suitable for timber, say 14,680 cords from the entire lot.

The most extravagant of CLARK's witnesses put it at 80 cords to the acre, say 29,360 cords in all.

The arbitrators, one of whom, Mr. HAMILTON, enjoyed the advantage of having viewed the lot and its crop in person, evidently doubted the correctness of all the witnesses, and award that CLARK had delivered to the COMPANY 32,169 cords, besides the hewn and round timber, which it was proved was equal to 5,000 cords more. So the truth must be that the lot yielded over 100 cords to the acre! It is strange, however, that CLARK concealed a fact so important to himself, and that it came out by means of the arbitrators.

CLARK had already received from the COMPANY as for wood	
from 367 acres	\$69,504 78
The arbitrators add	21,875 35
The 165,000 cubic feet of lumber, ...	3,300 00

Making the enormous sum of . . . \$94,580 13

Yielded by 367 acres of wild land! Of this sum the NEW YORK CENTRAL RAILROAD CONTRIBUTES \$91,280 13! It is clear enough that there are processes by which wild land can be forced to produce as no cultivated land ever has. What can be those processes? Arbitration is one of them evidently, but what fertilizer must be used? The odor of these arbitrators excludes guano from such a triumph as this. And the fertilizer, be it what it may, is it applied to the land or to the arbitrators? The Agricultural Society is desired to look into this matter, because "There remaineth yet much land to be possessed," and the receipts of the Road are increasing.

The award was held to be partial, because the COMPANY had not received any such quantity of wood as was mentioned in the certificates of measurement, which certificates had been proven

to be false, and because it was proven that such wood as had been delivered was not of the stipulated quality.

On the part of the COMPANY it was shown that it took wood from the lot as follows :

1st. Wm. Cain drew in March and April, 1855,	358	cords
2d. J. E. Comstock drew in May 1 to 8, 1855, .	975	"
3d. J. J. Rasback drew in May 8, to Dec. 27,		
546 car loads short wood, 7 cords ea.	3,822	"
649 do long 6 $\frac{1}{4}$ " "	4,056 $\frac{82}{100}$	"
138 do do 6 $\frac{1}{4}$ " "	862 $\frac{64}{100}$	"
4th. Ed. Tiffany drew Dec. 27, to Feb. 10, '56,	500	"
Total drawn away, ...	10,573	"

There was neither evidence nor pretence that any person or persons, except those above named, drew wood from this lot. Inasmuch as CLARK had been paid by the COMPANY \$69,504 78 by the 27th December, 1855, for 23,397 cords of wood, and all the deliveries up to February 10, 1856, amount to only 10,573 cords, the question arises, what quantity of wood remained on the lot undrawn ?

The mathematician and measurer, MR. PETER DORSCH, had given to CLARK, as of January 17, 1856, his official certificate that CLARK had delivered to the COMPANY 3,905 cords of mixed wood, for which CLARK had rendered his bill at \$2 50 per cord, amounting to \$9,763 12. This voucher had been put into the hands of the Paymaster about February 1st, 1856, and on finding it was not to be paid that month, CLARK withdrew it. This is the voucher demanded by the COMPANY to be "given up to be cancelled or destroyed." CLARK, however, contended that the wood mentioned in that certificate formed no part of the 23,397 cords for which he had been already paid, and so does the award.

The non-payment of the voucher happened on this wise : Director JOHN F. SEYMOUR, of Utica, called upon Directors JOHN L. SCHOOLCRAFT, of Albany, JOSEPH FIELD, of Rochester,

and DEAN RICHMOND, of Buffalo, to go to Rome and examine CLARK'S WOOD. They made such examination, attended by MR. PETER DORSCH, and the fruit of it was that they "agreed to telegraph MR. PRUYN not to pay any more money to MR. CLARK." In consequence of this, MR. PRUYN, acting as *locum tenens* of MR. CORNING, who was absent, on the 3d or 4th of February, 1856, issued an order to the Paymaster to pay no more money for wood delivered at Rome or Chittenango. MR. CORNING'S absence at this juncture is to be regretted—it was probably the cause of this overt act in the name of the COMPANY. It is pleasant to believe that MR. SEYMOUR'S officiousness caused him to be left out of the direction at the following election—a convincing proof that the persecution of poor CLARK received no sympathy at the hands of the appointing power in the COMPANY.

A further consequence of the examination malevolently set on foot by MR. SEYMOUR, furnishes an answer to the question just raised, what quantity of wood remained on the lot? MR. H. S. McELWAIN was despatched to take an account of the unmeasured wood upon the lot, and *to prevent error*, MR. PETER DORSCH went with him, to point out what he had already measured. There appeared to be but one lot of wood remaining there which DORSCH had measured. This was estimated by "area measurement," to contain 1,221 cords, but turned out, after being repled and measured, to contain only 922 ⁹² cords. Now, if this wood may be added to the previous deliveries, and at its "area measurement," 1,221 cords, there would be but 11,795 cords received by the COMPANY against 23,397 cords paid for! Where were the 11,600 cords? And echo answers where?

The unmeasured wood found by McELWAIN upon the premises, which embraced all that ever was delivered, was measured by him in April, 1856. His measurement was an approximation merely. He swears he deducted nothing for stumps, uneven ground, bad piling, or bad wood; while the proof stands uncontradicted and unqualified that from $\frac{1}{4}$ to

$\frac{1}{3}$ should be deducted from a *fair* outside measurement, to ascertain the actual quantity; that when he measured the wood, he "measured the area it occupied, or had the appearance of occupying;" that his intention was "to have it removed to Albany and re-piled and re-measured there, to get a correct measurement:" Besides, MR. PRUYN had directed that the wood should be so removed and re-measured. A fire in the fall of 1856 defeated the removal and remeasurement intended, but 2,018 cords on the ground, after the fire, measured when moved 1,539 cords. This "area measurement" MR. McELWAIN made to contain 8,762 $\frac{110}{100}$ cords, which included some 3,350 cords repiled by CLARK at a cost of the labor of 50 men from February 11, to March 28, and from it they threw out 700 cords of culls!

No wood, except 10,573 $\frac{96}{100}$ as above, was taken from the lot until after McELWAIN had measured all there was upon it, say:	8,762 $\frac{110}{100}$ cords.
Add the lot not measured by him	1,221 "
Add wood taken away	10,573 $\frac{96}{100}$ "

Total of wood drawn and undrawn, is 20,557 "

While, by the 27th December previous, CLARK received payment for 23,397 cords! Thus all the wood *ever delivered*, it was alleged, was less by some 2,840 cords than the quantity for which CLARK had been already paid.

The arbitrators, however, decided that 23,397 cords had been delivered; and further, that CLARK had delivered 8,762 cords in addition thereto, which will pay CLARK for 11,602 cords, which the ingenuous are requested to trace to the possession of the COMPANY which is required to pay for it. An examination of the testimony will sustain the calculation that the 20,557 cords overstates the quantity received by the COMPANY by at least 2,000 cords.

In ordinary cases such testimony as these arbitrators had before them in regard to both quantity and quality, would have made the decision of both points a very easy matter.

JAMES SIMS^{SR} testified: "I piled wood; it was not piled with any care, but was thrown off; when we came to a stump the wood was piled right over it; there were several piles together; after the piles were done you could not see where the stumps were; MR. PATRICK *was back and forward while I was piling.*"

JOHN HOAG, who chopped there in the winter of 1854 and '55, testified that the wood cut by him was "*measured by MR. PATRICK, and paid for by him.*" "I chopped by the cord; I put in *everything that would make wood*; think one-quarter of the wood was stumps, '* *'; by outside measurement a man could not tell the quantity of wood which was there."

WM. COOMES testified: "We found large quantities of logs in the piles all over that we could not saw; it looked to me as if pretty much all the limbs were put in that grew on the trees of any size: *we did not enquire as to folk's contracts*; the wood was piled up close as it could be, one tier against another, so that when we came to break into a tier we would have to take all down together; one pile was so jammed up against another * * * *; the man who measured the wood could not tell anything about the stumps or knolls, except where there was a single pile, and then there would be a single stick set up to keep the wood off the stump; I don't remember any instance where this was done, except in single piles; when the piles were opened we found stumps of all sizes up to three feet through; I should calculate that if I was going to put the wood into a merchantable shape, I should call six feet high four feet high; the wood there was piled six feet high; I think it would not pile more than four feet high to make it merchantable, properly piled and suitable wood; I have always made this estimate; *when we were sawing we used very often to talk it over*; * *; I should deduct one foot for piling, and one foot for rotten wood and limbs; this was on all the piles."

JACOB SHANDOFF, the engineer who drew wood in May and June, 1855, testified: "The piles of wood on the ground were piled so close together that you could not get in between them to measure them; *the tops of the piles appeared to be level or nearly so*; *when the piles were opened we found stumps, some brush heaps, knolls, some roots turned over, where the*

wind had blown over hemlock trees, some logs ; we could not see one of them without breaking into the piles ; in some places the stumps were very thick ; I think the stumps would average from nine to ten feet apart, as near as I can recollect ; they were principally hemlock stumps of different sizes and roots running from them, and the wood was principally piled on them ; we could not see any of the stumps without breaking into the piles unless it was on the first tier ; the wood was piled on the top of the stumps."

JOHN J. RASBACK, the conductor of the wood train which drew all the wood drawn from May 8 to December 27, 1855, testified: "*The long (i. e. unsawed) wood I drew away was piled on stumps, and brush and knolls, roots of trees, and over logs, old logs ; the piles were in tiers from ten to fourteen feet deep ; I do not recollect but one that was fourteen ; they were piled on these stumps, and brush, and logs and knolls, and were piled close to each other so that a man could not get in between them to examine ; I should not think it possible for an external measurement of those piles to tell how much was in them * * * ; MR. PATRICK had charge of banking the wood ; he was there and attending to it.*

JAMES GREEN, the engineer who succeeded SHANDOFF in January, 1855, and EDWIN TIFFFANY, the engineer who drew wood under RASBACK, and also after he quit, and in January and February, 1856, gives substantially the same description of the wood and its piling.

JOSEPH KNIGHT, a surveyor, counted and measured the stumps. *He estimated that the actual obstructions within the area measured as wood, without reference to the bad piling, amounted to 25 per cent.*

It was alleged to be proven that all this false piling, and consequent false measurement, was under the supervision of WILLIAM PATRICK.

EZRA FOSTER, JR., Assistant Superintendent of the Eastern Division of N. Y. Central R. R. since the CONSOLIDATION, testifies as to this wood: "*It was difficult to make steam with it ; it was principally hemlock and spruce, much of it green ;*

there was considerable many logs in it ; they would average from a foot to eighteen inches in diameter * * ; considerable of the wood appeared to be dozy, as if wind-fallen ; it was dozy, wet, soggy wood ; * * the engineers of locomotives complained of not being able to make time with it ; * * I complained to Mr. VIBBARD, and then for a while we would get a different kind of wood ; they would send down short wood to us, and then they would send the same wood again ; * * * I bought from time to time wood from the canal to mix in with it ; I cannot tell how much, quite a number of loads, perhaps in all 500 or 600 cords from the canal and city ; * * I got a different kind of wood sawed ; I think it was ash and elm, there may have been some hemlock among it ; then in a short time the CLARK wood would come again, and we would mix the short wood with it."

JOHN L. SCHOOLCRAFT, a Director, testified: "In the latter part of January or first of February, 1856, I and Mr. RICHMOND and Mr. FIELD were called upon by Mr. SEYMOUR, to go to Rome and examine a lot of wood delivered by Mr. CLARK to the Road, on the Rome and Watertown Railroad ; * Mr. RICHMOND, Mr. FIELD, Mr. SEYMOUR and myself went to this lot to examine the wood ; Mr. DORSCH was also with us, and a Mr. JOHNSON ; there was a large quantity of wood piled on the ground ; it was on both sides of the railroad ; it was piled so that a person could not pass in between the piles ; I know very little about wood, or its piling, or its quality ; there was a great deal of decayed wood, and small wood and limbs, and from the knowledge I have of piling, I think it was badly piled ; in some places it was piled on large logs ; large logs constituted a part of the piles ; they had been cut and not split at all ; the wood was not assorted ; the limbs and rotten wood were not taken out ; some of this was wood that bore on the ends the measurer's marks ; Mr. DORSCH was with us in the examination of the wood ; we had conversation about the mode of measuring the wood, and the condition of the wood ; we went on to the ground and examined the wood, and were there about two hours ; on our return to the hotel we consulted with Messrs. RICHMOND, FIELD and SEYMOUR ; we agreed to telegraph to Mr. PRUYN not to pay any more money to Mr. CLARK, and I did so ; * * * In the fall of 1856, after a fire had destroyed a portion of the wood on the lot, I again visited the lot with Mr. FIELD, a Director of the Road, COL. HAMILTON, Mr. SEYMOUR and JOHN T. CLARK ; the wood was piled over stumps ;

*the wood was of an inferior quality, not merchantable; COL. HAMILTON or JOHN T. CLARK measured the length of the wood; it was not four feet in length; I saw it measured; there were logs in among the wood, over a large piece of land, not split; when I was on the lot in the winter of 1853, the bottom of the same piles was of old wood; a layer or two of old wood and the top of new wood; I cannot say how much, but enough to attract my attention; * * * the wood on the Railroad was piled so close that we could not see in between the piles; we could not examine the inner piles; all we could see was the end of the piles; I cannot tell the proportion of rotten wood; I saw stick after stick; the ends were decayed; I did not want MR. RICHMOND's opinion after I saw the wood; the bottom of the piles had the appearance of having laid there a long while, and having new wood piled upon it time and time again; the other wood appeared fresh; the second time I was present they were assorting the wood, the piles were opened."*

The case is aided not a little by the circumstance, that the same witnesses saw the wood on the lot while the piles were so "jammed together" that nothing was to be seen but the fair and fraudulent outside; and also, after the piles had been opened and the inside "exposed."

DAVID UTLEY, a Director of the Rome and Watertown Railroad, testified: "I went on the lot with MR. ARMSTRONG, COL. HAMILTON, MR. SCHOOLCRAFT and JOHN T. CLARK; this was a year ago last fall; I saw one large pile; they were moving or assorting it on the Railroad; this was just after the fire; *I measured some of the piles, the height and length of wood; there were a good many piles close together, making one pile; the wood was short about six inches in length and height; there was considerable many logs on the bottom of the piles, and some small logs mixed in; I would consider the wood worth two-thirds of what we call good railroad wood."*

ELIZUR CLARK, of Salina, testified: "I have been in the timber business for the last twenty-five or thirty years; * * at the request of MR. SEYMOUR, I have gone to the CLARK lot and examined it for the purpose of seeing the wood that was cut there, its quality and situation; one time, the first time I went there, there was a large quantity of wood on the

ground; this was in the month of June, 1856; * * * where they opened into the wood, there was one place in particular that I noticed; that was piled over a rough piece of ground filled full of logs, which had never been split, two feet in diameter, thrown into the pile promiscuously and the wood piled over it; the wood was on the westerly side of the creek; *I measured the length of the wood and the height; I saw the marks on the ends of the piles where it was marked with black paint; this one was marked 7 feet high; it was one of the piles next to the Railroad; I measured the height of it in a good many places; it did not measure from the ground to the top of the piles over 6 feet and 6 inches; so far as you could discover, the other piles or tiers were smooth on the top so that you could walk over it, all piled close together; so far as the ends of the other piles were concerned, I could not see any particular difference between their height and the height of the pile I measured; it is a common custom with us to allow one inch for every foot in height of wood to get full height; in this case the marks were 7 feet and the pile only $6\frac{1}{2}$ feet; I measured the length of 100 sticks in that pile; I made the length 3 feet 8 inches; I measured from the scarf to the point to ascertain the length; 3 feet and 8 inches was the average; some of the sticks were not more than 3 feet, others were 4 feet; the pile that was marked 7 feet high I made no deduction of one inch per foot to get the $6\frac{1}{2}$; $6\frac{1}{2}$ was its actual height; the wood was not piled as I have been accustomed to see it; it was piled over stumps; you could see some of the stumps on the outer piles; on both sides of this great body of wood you could only see two outside tiers of wood; so far as regards the quantity of wood, I did form an estimate in my mind of what should be deducted from it to make its quantity; I thought I could take any 100 cords of it and put it into 75 cords; I thought all the wood measured one-quarter too much; I mean the big pile and the piles near the branch, I would except what had been re-piled; there was some wood there that had been re-piled; the wood that had not been re-piled, I thought was measured one-quarter too much; so far as the wood is concerned that lays near the branch, some portions of it appear to have lain there so close together that it was mildewed or water-soaked; the other big pile when I measured I did not see but it was dry enough; I could not see into that; that portion of the wood that was mildewed was not worth more than two-thirds as much as if it were dry; I would deduct $33\frac{1}{3}$ per cent. for mildewed; I*

examined the lot with a view to see how many cords it would yield to the acre; from the best judgment I could form, judging from the stumps and the timber standing, I think it could not vary much from fifty cords to the acre."

JOHN T. CLARK, late STATE ENGINEER, testified as to the bad piling and admixture of stumps, roots, logs, and rotten and dozy, with such wood as was sound; that it would not average more than $3\frac{1}{2}$ feet in length: *that the wood was measured in the presence of COL. HAMILTON, and said:*

"From my investigation and examination of the wood, I came to the conclusion that forty per cent. deduction should be made from the wood; If the stumps were excluded from observation, and there were no stumps adjacent, no man could have told how much was there; the stumps being adjacent, the person might foresee they were under."

DEAN RICHMOND, a Director, testified that in the month of January or February, 1856, he went to Rome with JOHN L. SCHOOLCRAFT, JOSEPH FIELD and MR. SEYMOUR, and MR. DORSCH, (meaning thereby MR. PETER DORSCH,) to examine a quantity of wood on what is called the CLARK lot.

Q. Was any question asked MR. DORSCH, when on the lot and looking at the wood, how he could tell anything about the quantity or quality of wood piled in the way that was? If so, what was his reply; Give the language if you can, if you cannot, give the substance.

A. We walked alongside the wood; I believe I was alongside of MR. DORSCH, most of the way; we came up to where there was some seven or eight tiers, and I asked MR. DORSCH, said I, "MR. DORSCH will you please tell us how any man can measure that wood and give the proper amount?" *The wood was piled so close together that no man could get between it; he said it could not be done; that he was sent here to measure the wood; that anybody knows it cannot be done; that he did the best he could with it, but that it could not be done properly; I asked him if this wood was measured for us in this manner; he said it was; once or twice afterwards the same question was asked; I looked at the stumps and said I did not see how wood could possibly be measured in such ground, among such stumps, in such tiers; he remarked it can't be done!*

The award was charged to be partial for the reason that it allowed \$3 per cord for all the wood, while the submission gave the arbitrators power to make an equitable deduction.

The contract being void by the Statute of Frauds, and subject at all times, so far as it remained executory, to revocation or modification by either party, it was held to have been modified by the notice VIBBARD gave to CLARK, in October, 1855. Neither the wood delivered before nor after the notice was of the sort required by the contract—it was not “suitable for burning in locomotive engines”—nor was it “properly cut and split,” nor “sound,” nor “free from small limbs.” Of the wood examined by JOHN T. CLARK and others, and by the ARBITRATOR HAMILTON, it took 50 men 39 days to split, assort and re-pile $3,353\frac{70}{100}$ cords, at a cost of more than 50 cents a cord; and 500 to 700 cords had to be thrown out as unsuitable. CLARK himself had acted under the notice.

HENRY STEVENS testified: “That he was Paymaster of New York Central Railroad in January and February, 1856; * * * this is the \$9,000 voucher; this certificate of measurement was presented to me; the outside paper or voucher; I made the certificate of measurement; in the certificate of measurement there are $3,905\frac{25}{100}$ cords, and the price stated on the certificate is 20 shillings; *it was handed to me by Mr. DORSCH, in order to have the voucher made out for the purpose of payment; it was then \$2 50, as it is now; Mr. CLARK came in and asked me when we were going to pay; I said, probably not this month; he then asked me how many cords there were; I hunted and found the voucher and told him; he then says to me let me take that voucher if you are not going to pay this month; I told him I had no objection, and handed him the voucher.*”

That notice had been given by VIBBARD to CLARK that after October, 1855, no more than \$2 50 per cord would be paid to him for wood, was not denied; and it seemed clear that in February, 1856, poor CLARK had made up his mind to submit to the exaction, because he rendered a bill for wood at that price, and manifestly expected to be paid that price. It

was hard for him to take such a price after the habit had become fixed of receiving a higher one, and so the arbitrators must have thought, when, by their award, they relieve and protect him not only against the rapacity of the COMPANY, but also against his own weakness.

Upon grounds which may be gathered from the foregoing statement, the COUNSEL for the COMPANY contended orally before the arbitrators and also placed in their hands a written brief, claiming that the contract being made for trees growing upon land was liable to modification, and was modified by MR. VIBBARD from three dollars to two dollars and fifty cents per cord. That MR. CLARK, under his agreement, had no right to deliver more than 12,000 cords per year; that the contract was for suitable wood, properly cut and split; but that the wood was not suitable for railroad purposes, according to contract; that the wood was so coarse that it took fifty men from February 11 to March 28, to split and re-pile 3,353 cords of it, and 700 cords of culls were thrown out, and that one-half of all the remaining wood required re-splitting, and that from one-sixth to one-fourth should have been culled out; that the wood was so loosely and badly piled in the interior of the piles, and also piled over hidden logs, brush, stumps, roots and knolls, and in so many and close rows of piles, while the exterior of the piles appeared well, that the whole was a fraud upon the COMPANY, and upon its agent, unless he was a party; and in either event the certificates of measurement were no criterion of the quantity of wood. That the wood was not four feet in length nor six feet high. That the fact that the measurement of wood over stumps, logs, roots and knolls, could not be relied upon, was not only apparent from the circumstances, but also from the fact that the land could not yield the quantity alleged to have been measured. That the number of car loads of wood drawn from this lot was most manifestly a better measurement of the wood delivered by CLARK than any measurement that could have been made on the ground,

and relieved the case from all guess-work. That they have the evidence of the men who drew the wood, the number of car loads and the quantity per car. That fortunately most of it was drawn by RASBACK, who commenced drawing in May, 1855, and continued till January, 1856, and kept a memorandum of loads and days. That from the time this drawing commenced until it was stopped in February, 1856, they had the quantity drawn by each and every man, and that all that was afterward drawn was by JOHN HOAG, who kept account of his cars, and the wood drawn in them was re-measured at Albany, except 406 cords measured at Oriskany. That there had been drawn before HOAG commenced 8,764 cords, and HOAG drew 5,720 cords; and that it was impossible that the quantity of wood claimed by CLARK could have been drawn away. That every experienced and disinterested man who had examined the piles estimated that there should be a deduction of one-fourth from the apparent quantity to get at the real quantity, taking into account the quality. That JOHN T. CLARK estimated that the deduction should be FORTY per cent; E. B. ARMSTRONG, ONE-FOURTH; JOHN HOAG, ONE-FOURTH; DAVID UTLEY, ONE-THIRD; ELIZUR CLARK, ONE-FOURTH; WILLIAM COOMBE, ONE-THIRD.

Upon arbitrators whose indifference to the parties litigant was not obnoxious to suspicion because of their relations to either, facts and inferences so specious might have had effect. But it was undeniable that, to a man, they were the appointees of one of the parties, that in honor or emolument, or both, all of them were paid by the party. One of them indeed, to whom further honor would be superfluous, and therefore received from his connection with the COMPANY money only, was liable to the grave disability of having investigated and pre-judged the case. SCHOOLCRAFT, swearing to the bad quality and short measure of the wood, says: "COL. HAMILTON or JOHN T. CLARK measured the wood; it was *not* four feet in length; I saw it measured;" and JOHN T. CLARK says: COL. HAMILTON was present; we were on the lot an hour

or an hour and a half, we may have been there two hours ;" All who are aware of the keenness of COL. HAMILTON's faculties need not to be told that, "in an hour or an hour and a half," he would see a great deal. It is due to COL. HAMILTON, to state that on that occasion he was not under oath—when he made the award he was. It was notorious too, that no man holding any post of honor or profit in that COMPANY could do anything disagreeable to the appointing power, except at the forfeiture of his office. The Cabinet of GEN. JACKSON, on the day it was most especially "a unit," is but an emblem of discord contrasted with the UNITY OF THE DIRECTION OF THIS COMPANY—it casts but a solitary shadow in the sun. This fact makes necessary a conclusion equally irresistible and creditable. The arbitrators must have been aware what would be agreeable to the appointing power, which relieves that high quarter from the slightest suspicion of having in any way countenanced the modification of the contract by VIBBARD ; the impeachment of the correctness of the certificates of MR. PETER DORSCH ; the defamation of CLARK's wood ; the efforts of Director SEYMOUR, or any of the persecutions which fairly entitle CLARK to a place in the next edition of the Book of Martyrs. Indeed, the COURT was urged to confirm the award upon the very ground that its acceptability in that quarter had been demonstrated by the re-appointment or continuance of these arbitrators in the same offices in the COMPANY, and everybody knows the appointing power itself had received from proxies the same meed of approval. The case might have been made stronger by apprising the COURT that vengeance had overtaken the Director, who, misled by a sense of duty, had prompted investigation ; that an impression had been rife among the *employees*, that whosoever maligned the "CLARK WOOD" did so at the peril of his daily bread ; and whether that impression was well founded or not, it was potent enough to annihilate all memory of the wood in some, and to drive others to such supplications to be spared subpœnas as were painful to hear and impossible

to disregard. It is to be lamented that the STOCKHOLDERS were not recognized as parties by either of the Tribunals which have tried this case, and as the virtues of CONSOLIDATION are quite well known to them, the expediency of consolidating the interests of the STOCKHOLDERS and of their OFFICERS, which now appear to be several, is suggested.

The COMPANY however took nothing by its motion. The arbitrators set their faces like flint against all attempts to modify or to enforce the contract—to impeach the truth of the certificates of measurement, to disparage the fertility of Clark's lot, or the quality of its wood, by testimony.

Unlike the COMPANY, which seems to have trusted to the number and respectability of its witnesses to establish its case, CLARK surprises us by the completeness of his trust in Providence, which is never without a Superintendent. No subpoena of his summoned Railroad Directors, Bank Presidents, or ex-State Officers, but to the COMPANY's array of witnesses of position, he opposed a remarkable disparity in point of number, and of much greater disparity in point of character. So unequal a contest has not been observed since another David smote another Goliath, and in this instance, as in that, "the battle was not to the strong," nor the spoil either. Let all Clarks take courage and all Railroad Companies be warned by this overruling of a superintending power.

The entire defence and claims of CLARK rested mainly upon the testimony of two witnesses—WILLIAM PATRICK and MR. PETER DORSCH—a fearful odds!

PATRICK swore as became "the hour and the man." He said: "I was to get my pay by *Railroad measurement*; I was to get so much a cord for what I hauled out and banked by *railroad measurement*; * * I was on the lot daily *except Sunday*; I saw the wood daily from the time it was cut until it was measured; I assisted MR. DORSCH in measuring the wood every time with the exception of once, when I was sick, and then I sent a man to help him."

PATRICK's pay being thus contingent upon "*railroad measurement*," which, done into English, means the measurement of MR. PETER DORSCH, it was held that PATRICK had a direct pecuniary interest in maintaining the accuracy of the certificates of that worthy man; for if the COMPANY could be made to pay for roots, stumps, logs and knolls, as for wood sold and delivered by CLARK at \$3 per cord, he PATRICK, would be entitled to "so much" for each and every such cord. Having assisted at the measuring, he affirmed its entire correctness, and produced memoranda of the details handed or furnished to him by DORSCH—his connection with the piling is sworn to by SIMSER and HOAG, and is admitted by himself. The erection of sticks to keep the wood from the stumps in the cases of *single* piles, where the stumps could not be concealed, and in those cases only, is conclusive. PATRICK "made an effort" to magnify the quantity of wood banked, which would have satisfied MISS TOX herself, but his data were held to be incredible, because they showed a product of 46,000 cords of wood, which was altogether farther beyond the testimony than the arbitrators went. Besides, McELWAINE testified that PATRICK told him that the 8,762 cords, measured in April, 1856, by McELWAINE, was more wood than DORSCH had previously measured on the lot. McELWAINE had stated the same fact in his report to MR. PRUYN. McELWAINE swore also, that he asked PATRICK the amount of DORSCH's measurements, and that he replied he could not give it. McELWAINE made a memorandum of the conversation at the time. It will be recollected that on this occasion McELWAINE was engaged in trying to discover the actual quantity of wood delivered and measured upon this lot, and PATRICK knew the object of his enquiries—therefore, if PATRICK had possessed the memorandum book produced upon the hearing, he would have exhibited it. The entries in the book were suspiciously fresh also. PATRICK swore that DORSCH marked the piles short to allow for stumps, but on cross-examination he could only remember four instances—

twice in his own case, and twice in the case of others, and in regard to a small body of wood. The men who sawed the wood on the lot swore they measured the piles, and found that the marks on the wood represented its entire length. PATRICK needs, and is entitled to the benefit of a moral or religious excellence developed by his testimony, incidentally, he was never on the lot on Sunday!

The witness who seems to have been most esteemed by the arbitrators, and whose evidence would have controlled the award, if such authority had been allowed any control whatever, is MR. PETER DORSCH, of Schenectady. *Esprit du corps* may have had something to do with this—he had been “PETER DORSCH OF OURS,” ever since the CONSOLIDATION—quite *le fils du Regiment*. This veteran testified:

“I reside at SCHENECTADY; I was in the employ of the CENTRAL RAILROAD COMPANY, and I was from the time of the CONSOLIDATION; this was five years ago; my first business was I had charge of a portion of track as trackmaster; I continued trackmaster upwards of one year, it may have been more, until January, 1855; after that I was employed in measuring wood from Albany and Troy to Syracuse; I continued as such measurer until the first of February, 1856; during that time I was engaged in measuring wood for the COMPANY; *my position at that time ceased by my giving the ROAD notice that I should quit*; I gave that notice to MR. VIBBARD; I resided at SCHENECTADY during all this time, and MR. VIBBARD did also; I often saw MR. VIBBARD in my official duties while measuring wood; I am acquainted with the CLARK lot; I have been on part of it; I measured wood on it.” The witness is shown certificates of measurements, and says: “They are all my certificates; the signatures are mine; * * MR. WM. PATRICK *generally assisted me*; I measured at the several times the several amounts stated in those certificates; at those times the amount of wood was actually there; number three says so many cords of hard wood, it should be mixed.” The witness is shown a paper, and says that it is his handwriting, it is dated January 17, 1856; the amount of wood stated in it, 3,905 $\frac{32}{100}$ cords. “*The price of \$2 50 was not so when I made out that certificate; when I made it, it was \$3, it is now \$2 50*; the amount of wood stated in that certifi-

There was there when I measured it: " " " I measured short a part of the wool that was saved upon the lot: I mean by that a person took a lay line and measured the length of those piles and found them longer than the marks on the ends of the piles indicated, so much shorter that it would be considered a false measure a block will two feet short, a ton at each end and over and beyond that I made a difference in this case. I have looked for some of the original memoranda of my measurements and they are probably destroyed: I cannot find them: they were on loose pieces of paper: Mr. Clark was generally with me when I measured the wool: sometimes I had a man to assist me, and sometimes a man by the name of SHELLEY, of Oneida, sometimes only Mr. Clark and Mr. Patrick: " " " Well upon this Clark lot with JOHN A. SCHOOLCRAFT, of Albany, JOSEPH FIELDING KITCHEN, and DEAN RICHMOND of Buffalo, and JOHN F. SEYMOUR, all then Directors of the New York Central, to look at the wool of this lot: I was then asked in the presence of these gentlemen how I could tell anything about the quantity and quality of that wool other than I was or how I could measure it: I did not say in reply that I could not tell, or that it was mere guess work, or anything of the sort: I did not say substantially that to Mr. SCHOOLCRAFT, nor to Mr. KITCHEN, nor to Mr. FIELD: " " " I did not say that I could not measure it: I said that it was difficult, that I had to go on the tons of the piles; that there might be stumps I could not see."

A more simple and intelligible story could not well be told. Unequivocal statement, firm denial, and courteous rebuff: both one might expect it would make an end of strife. The moral effect of so plain a tale upon the arbitrators is visible enough in their award, and the adverse party could raise but a single objection to it, to wit: that it was false—which it is as apparent, found small favor with the arbitrators. There was, indeed, this remarkable feature, which might have worked mischief between parties who knew less of each other than did these arbitrators and this witness, that nearly every material statement made by DORCE was contradicted by witnesses who stood unimpeached, and were allowed to depart so. An example or two will illustrate the indignity to which DORCE was sub-

On the 5th September, 1855, DORSCH gave a certificate of measurement and inspection, which certified that HENRY PATRICK had delivered to the COMPANY, at Oneida, $1,061 \frac{60}{100}$ cords of mixed wood, at \$3 50 per cord, upon which certificate, after being *endorsed* by VIBBARD, PATRICK received from the COMPANY *in the presence of* CLARK, \$3,715 15. At that time there had been in fact but 570 cords measured. On the 23d November, 1855, DORSCH gave to the same PATRICK, for the same wood, another certificate in which it does duty as 1,214 cords of beech and maple, at \$3 50 per cord, upon which, duly *endorsed* by VIBBARD, PATRICK obtained from the COMPANY the additional sum of \$4,294—CLARK being, as before, the subscribing witness to the payment.

At this time no more wood had been measured, nor was any more measured until April of the next year, when there proved to be but 840 cords. This wood had been purchased by CLARK and PATRICK from a MR. AMSTED, who swore there was about 1,400 cords of it, and that he sold it to them at \$2 38 per cord, making the difference in quantity 865 cords, and in value of \$4,491. The quantity was actually 30 cords less than AMSTED stated, and AFTER INVESTIGATION, there was refunded on these fraudulent certificates, as follows:

On 1,384 cords 9s. per cord overcharged, . . .	\$1,557 28
For 891 cords never delivered, . . .	3,118 50
Total, . . .	\$4,675 78

On the 20th December, 1855, DORSCH certified, or perhaps prophesied, that H. S. BOGUE had delivered to the COMPANY, at Canastota, $2,531 \frac{26}{100}$ cords of hard wood, at \$3 50 per cord, upon which, *endorsed* by VIBBARD, the COMPANY paid \$8,824 48, January 8, 1856.

McELWAINE says, in April, 1856: "The facts are that at the date of such certificate and voucher, no wood whatever had been delivered by or in behalf of H. S. BOGUE, at Canastota, *nor was any such man at that time known at that place.*

About the 1st January, 1856, a man by that name came from Cohoes to Canastota, and commenced cutting and delivering wood from a lot of woodland purchased last fall by GEORGE H. CLARK from a man by the name of HUNTLEY. The result was, that in May, 1856, and AFTER INVESTIGATION, there was refunded:

On 2,531 $\frac{36}{100}$	cords for overcharge, \$1 per cord,	\$2,531 25
" 436	" never delivered, ...	1,090 10
		\$3,621 35

The arbitrators very properly seem not to have encouraged enquiry into matters not named in the submission, and CLARK'S Counsel was evidently of the same way of thinking. So much as they could not keep out of the testimony does not appear to have gotten in anywhere else, and the amiable principle "let by-gones be by-gones," is conspicuous in the award. Otherwise the catalogue of frauds in the case might possibly be longer, and the exact amount of the profits of the "CLARK WOOD" be shown. Restitution having been made for the frauds at Canastota and Oneida, of what possible use could further information be to the COMPANY? And why should the arbitrators have allowed MORSE to tell what CLARK paid for the lot—suppose it to have been the \$25 per acre hinted at in the papers, was it not enough for the COMPANY to know that by no process could it be shown that the lot yielded in his hands more than \$275 per acre?

The submission bears date September 4, 1857, and is signed by GEORGE H. CLARK and ERASTUS CORNING, PREST. & CO. The award bears date April 19, 1858, and is signed by all the arbitrators—an evidence of such harmony of opinion as makes each arbitrator appear so like his fellow, that it is not easy to say which is the greater of the three.

"We award," say they, "that the measurements and certificates of measurement of the wood sold and delivered by said CLARK to said COMPANY, on or near the line of the Rome and

Watertown Railroad, are correct, except as hereinafter stated; that said Clark has delivered the quantity of wood at or near said Rome and Watertown Railroad near Rome, and of the quality for which he has received pay, except as hereinafter stated; and that the price which he has been paid therefor was right, except as hereinafter stated.

"We award, that from the whole amount of wood which said CLARK has so delivered and for which he has been paid and for which said COMPANY hold said CLARK's receipts, amounting to twenty-three thousand three hundred and ninety-seven cords, there should have been deducted for deficiency therein, occasioned by *bad piling*, stumps, cradle knolls, hollow logs and defective wood, and all other deficiencies, ten per cent. of that amount, being two thousand three hundred and thirty-nine cords and seven-tenths of a cord, which last mentioned amount at three dollars per cord, will amount to seven thousand and nineteen dollars and ten cents; and this last named sum with interest thereon from the 19th day of April, 1855, (that being the day we fix on to average said deficiency,) will amount to eight thousand four hundred and ninety-three dollars and eleven cents, and this amount last named is to be deducted from the amount due to said Clark for other wood delivered by him for which he has not yet been paid, as hereinafter stated.

"We find that the COMPANY has in no instance paid said CLARK a higher price than it was legally and justly bound to pay for said wood sold and delivered, except as above stated."

It would be gratifying to know how these arbitrators arrived at TEN PER CENT., in view of the evidence before them, as a proper deduction on this portion of the wood. If Dorsch's "measurements and certificates of measurement" were true at all, they were so in whole, not in part. The deficiency to be atoned for by this deduction, DORSCH swears positively did not exist—he *had supplied it*. If DORSCH's certificates were not believed, there was nothing left but such evidence as the COMPANY furnished of the false character of DORSCH's certificates both as to quality and quantity. *No witness of theirs swore to any less deduction than twenty-five per cent. on the score of quality.* Indeed the

one who made the most careful calculation put it at every six cent. for both. If DORSCH were impeached, it is an outrage upon the COMPANY to award 10 per cent., which nobody swore to, instead of 25.33, or 40 per cent. deduction, which several witnesses did swear to; if DORSCH were not impeached the outrage is upon CLARK, because DORSCH swore plump 100 and not 90 per cent. If DORSCH were not impeached, JOHN L. SCHOOLCRAFT, DEAN RICHMOND, JOHN T. CLARK, DAVID UTLEY and others were. Besides, no deduction whatever can be justified, except upon the ground that DORSCH's certificates were not correct, and the award declares the 10 per cent. deduction "to be for bad piling, stumps, cradle knolls, hollows, logs and defective wood." There were none of these substitutes for wood in the testimony of DORSCH or PATRICK, but that of the COMPANY's witnesses was full of them. The ARBITRATORS seem to have taken their quantity and price, without abatement, from DORSCH, while they get the bad piling, roots, stumps, &c., in quantity exactly opposed to the testimony, from the witnesses on the other side, without perceiving that by recognizing the roots, stumps, bad piling, &c., at all, they made DORSCH's quantity and quality impossible.

There is two-edged injustice in requiring CLARK to deduct and the COMPANY to pay upon an obviously wrong quantity. Perhaps they did not weigh the evidence at all—they may have measured it with Mr. PETER DORSCH's own rod, and after Mr. DORSCH's method. An "area measurement" of Mr. DORSCH's testimony might show the greater number of cords of truth, seeing it was entirely without logs, stumps, roots, knolls and what not, while the testimony of the opposite party abounds in them. At all events TRUTH 10 PER CENT. OFF, is a new quotation in the market, and it might have saved dispute in the future, if the award had gone a little further and decreed at what rate of discount TRUTH becomes FALSEHOOD.

"We find and award," say the arbitrators, "that over and above the aforesaid amount of wood which said CLARK had delivered and been paid for, (viz., the aforesaid amount of 23,397 cords,) the said CLARK has also delivered to said COMPANY, at their request, eight thousand seven hundred and sixty-two cords and one hundred and ten feet of wood, including the amount mentioned in the certificate held by him; that said 8,762 ¹¹⁰ cords of wood were delivered by him at the place aforesaid, on or before April 19, 1856, and that for the same the said COMPANY were and are bound to pay said CLARK at the price of *three dollars* per cord; and that said CLARK is entitled to recover for that last mentioned amount of wood at that price against said COMPANY, making the sum of twenty-six thousand two hundred and eighty-eight dollars and fifty-seven cents, with interest thereon from April 19, 1856, which will amount to *twenty-nine thousand nine hundred and sixty-eight dollars and ninety-six cents at the date of this award.*"

It is then decreed, that from this sum shall be deducted the aforesaid \$8,493 11 for deficiencies, and proceeds:

"And we do therefore award, that the NEW YORK CENTRAL RAILROAD COMPANY pay to said CLARK the sum which he is entitled as aforesaid to recover, being the sum of *twenty-one thousand four hundred and seventy-five dollars and eighty-five cents, with interest thereon from the day of the date of this award.* * * * * *

"And we therefore award that, after the making of such payment by said Company to said Clark, the said Clark deliver up to said Company the aforesaid certificate or certificates now held by him.

"In witness whereof we have hereto set our hands and seals, this nineteenth day of April, 1858.

(Signed) "D. HAMILTON. [L. S.]
 "L. SPRAKER. [L. S.]
 "B. P. LEARNED. [L. S.]

"Signed, sealed and published }
 in presence of }

M. H. ST. JOHN."

The arbitrators are indebted for these 8,762 ¹¹⁰ cords whereon to award Clark \$3 per cord, to an "area measurement" by McELWAINE, which measurement McELWAINE swears was merely an *outside measurement*, and allowed nothing for bad piling, roots, stumps, logs, &c. Mr. PRUYN having directed that the wood should be removed and measured at Albany, McELWAINE expected to arrive at the true quantity after its removal there.

There had been, by the labor of fifty men for thirty-nine days, split and re-piled 3,353 $\frac{78}{100}$ cords of this wood, of which McELWAINE testified: "that part of this wood that was re-piled was in a shape to get a correct measurement, *as far as it could be on such ground*; but in regard to the whole, he swears: "If it was not to be re-measured, I would not have been satisfied with the measurement; 2,018 cords on the ground, after the fire, measured when moved, 1,539 cords." A quantity, estimated by him on the lot as 1,221 cords, when removed and re-piled, measured only 922 cords. At all events, upon the same authority which gave the arbitrators the arbitrary quantity of 8,762 ¹¹⁰ cords, they knew also that that was not the correct quantity.

McELWAINE seems to have been regarded as a credible witness to swear money into CLARK's pocket, but for no other purpose; not a syllable calculated to save the COMPANY from buying roots, stumps, knolls and hollows at \$3 per cord, appears to have reached even the ears of the arbitrators. The award presents the very remarkable inversion, that from the fabulous quantity of 23,397 cords, upon which the honest man who measured it swears he made deduction for roots, stumps, logs, &c., it deducts ten per cent. for that very consideration; while from the 8,762 cords which the unimpeached and unimpeachable man who measured it, swears was the apparent and not the real quantity, no deduction whatever is made; and this comprises the very wood inspected and condemned upon the ground, by one of the arbitrators, himself then performing for the COMPANY the functions

formerly exercised by DORSCH—those of wood agent. DORSCH had the grace to swear he made deductions, he could not go the length of ignoring them, although his action in that behalf was voluntary—his successor is able, however, to discard them against the evidence of his own eyes, which he has the right to distrust, and against the evidence of honest men, whose evidence unimpeached was to be believed.

More than this, for 3,905 $\frac{32}{100}$ cords of this wood, CLARK had demanded payment of the COMPANY at \$2 50 per cord, and held, produced and filed with the arbitrators his voucher for it at that price—it was marked as an exhibit—yet, for those very cords, it is awarded that the COMPANY shall pay \$3 each. The peremptoriness of expression toward poor CLARK in relation to this voucher is the only trace of ill feeling toward that abused person to be found in the award or in travail that gave birth to it, on the part of the arbitrators, and it is to be regretted that CLARK was not required in more courteous words to surrender TWENTY SHILLINGS WORTH OF VOUCHER, upon being paid THREE DOLLARS THEREFOR BY THE COMPANY!

This award is now affirmed by the General Term, and judgment has been entered against the COMPANY for \$21,475.85 with interest from April 19, 1858. If any Stockholder will compute the interest and add that and the costs of the litigation to this sum, he will have before him in dollars and cents what it costs not to modify or to enforce a verbal contract made between two men of Schenectady. The cost of enforcing or modifying one will be known when such a thing shall have been done.

A careful computation, it is believed, will justify the statement that the treasury of the COMPANY would be better off in the end if it had paid directly, instead of indirectly, a Hundred Thousand Dollars to the parties who share what has already been paid and will share what is yet to be paid.

A Company which provokes such expenditures as these will have other uses for its revenue than to pay dividends; and the simple souls who wonder why the most lucrative

route on the continent cannot keep its stock within twenty per cent. of par, or its dividends from shrinking, may as well get ready to speculate why there has come to be no dividend at all?

When that day comes the investigation will be made, which too late will show how all was lost, as well as that all might have been saved; and it will not be strange if other Sir Giles Mompessons shall be found to have gone "beyond the seas."

It is quite probable the Court allowed full weight to the consideration warmly pressed upon it, that the action of the power which appointed these arbitrators had been approved by the Stockholders who had re-elected it; and the re-appointment or continuance of the arbitrators in their several offices, was a marked approval of this award by the appointing power of the COMPANY. If the COURT desired to read a lesson to the STOCKHOLDERS who, through timidity or negligence, perpetuate mal-administration, notorious as it is infamous, the absurdly stringent rules of law in regard to arbitration made it easy to do so. By ignoring as that interest the counterfeit which was represented, the COURT could readily excuse itself for not standing in the way of a COMPANY so willing to be robbed as to take upon itself the performance of the meanest and severest of the labors by which it was to be plundered. The COUNSEL of the COMPANY represented nobody but himself—the COMPANY stood behind somebody else, cursing his earnestness.

In this point of view the affirmance of this award may be worth to Stockholders more than its cost, and that the moral benefit of it may be diffused, it is now made public what has been affirmed.

The time is approaching when the Stockholders of this Company will be expected to respond to the annual requisition for their proxies in the usual manner—and it remains to be seen whether the annual farce of an election is again to be acted without any change of persons or even of costume.

The Stockholders may continue cowardly and time-serving as ever, but the misuse of their property and franchise by the management they have sustained from the beginning, has worked mischiefs of so serious a character to the moral and material interests of this State, that it will become them to reflect how much longer they can expect the PEOPLE to abstain from legislation indispensable to the public protection? Unless some warrant is given that the STOCKHOLDERS have virtue enough to rebuke dishonesty, negatively at least, by abstaining from re-electing the dishonest, the CANAL INTEREST of this STATE will hold itself authorized to resort to countervailing enactments even at the hazard of being thought vindictive. Further justification of this course may be expected; but a single transaction has now been exposed—others will be.

THE
FINANCIAL CONDITION OF THE CENTRAL.

From the New York Herald.

We give below a carefully prepared statement of the business of the New York Central Railroad Company for the last six years, framed from the Company's own Reports from 1855 downwards. The receipts and earnings of the Company have been decreasing, yet the Company stuck steadily to a semi-annual dividend of four per cent. until the last. The statement shows that such dividends were made out of capital, or by the issue of bonds—that is, creating new stock and new bonds, in order to maintain the appearance of a remunerating business, and consequently increasing the price of its stock in Wall Street. When we see the directors of railroads among the most rabid speculators on the bourse, we always infer that there is a great probability that the stock in which they speculate, of railway companies in which they are directors, are jobbed according to the management of the road for Wall Street purposes. At the present moment there are many railroad companies that cannot pay their hired laborers regularly, or in full; and back debts for mere wages are accumulating.

Railway property is among the most important of the country, but there are too many competing roads, and the transportation of some of the Western railroads must fall off

from this cause alone. In mild winters, like the last, the water navigation will enter into successful competition with the railroads.

The West is suffering from the continued manufacture of an irresponsible shin-plaster currency, instead of using the precious metals alone.

NEW YORK CENTRAL RAILROAD.

Receipts.

YEAR.	PASSENGERS.	FREIGHT.	OTHER SOURCES.
1853 .	\$2,829,668 74	\$1,835,572 25	\$122,279 18
1854 .	3,151,513 89	2,479,820 66	286,999 95
1855 .	3,242,229 19	3,189,602 90	131,749 05
1856 .	3,207,378 32	4,328,041 36	171,928 50
1857 .	3,147,636 86	4,559,275 88	320,338 67
1858 .	2,532,646 55	3,700,270 44	295,495 71
Total, .	\$18,111,015 55	\$20,092,583 49	\$1,328,791 06

Total Receipts for Six Years.

From Passengers, ...	\$18,111,013 55
From Freight, ...	20,092,583 49
From other sources, ...	1,328,583 49
Grand Total, ...	\$39,532,388 10

The passenger business on this road, it will appear, reached its maximum in the year 1855, since which it has decreased \$709,582 64. It was less during the past year (1858) by \$296,962 19 than in 1853, (the first year of its consolidation,) or any year since.

Earnings from all Sources.

1853, ...	\$4,787,520 17
1854, ...	5,918,334 50
1855, ...	6,563,681 14
1856, ...	7,707,348 18
1857, ...	8,027,251 41
1858, ...	6,528,412 70
1859, ...	6,176,795 96

—Estimating September receipts at \$700,000, against \$653,000 for September, 1858.

It will be observed that the gross earnings for 1859, (fiscal year ending September 30,) are smaller than any year since 1851 :

YEARS.	CAPITAL STOCK.	INCREASE.	DECREASE.
May 17, 1853,	\$22,213,984		. . .
Sep. 30, 1854,	23,067,415	853,431	. . .
" 1855,	24,154,861	1,087,446	. . .
" 1856,	24,138,661		18,200
" 1857,	24,136,761		. . .
" 1858,	24,182,400	45,739	. . .
Total,		\$1,986,616	\$18,300

Net increase of Capital Stock in five years, \$1,969,516.

YEARS.	BONDED DEBT.	INCREASE.	DECREASE.
May 17, 1853,	\$10,731,801		. . .
Sep. 30, 1854,	11,947,121	1,215,320	. . .
" 1855,	14,462,742	2,515,621	. . .
" 1856,	14,763,898	301,156	. . .
" 1857,	14,607,510		156,388
" 1858,	14,402,635		204,875
Total,		\$4,032,097	\$361,263

Net increase in five years, \$3,670,834 of Bonded Debt.

Dividends paid in 5 years ending Sep. 30, 1858,	\$9,790,130
Gross Earnings in same 5 years, .	\$34,744,528
Operating Exp's do, .	\$18,528,172
Int. on Sinking Fund, .	4,935,095
Construction account, .	7,524,776
Total Expenditure in five years, .	30,988,043
Applicable to dividends in five years, being about 3½ per cent. per annum	3,756,885
Deficiency in five years, ...	\$6,033,245

Partially provided for as follows :

Increase in the Capital Stock, as above, . . .	\$1,969,416
Increase in the Bonded Debt, ...	3,670,834
Increase of Stock and Debt, ...	\$5,640,250





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